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MISCELLANY.

THE ORIGIN OF THE PRACTICE OF SEPARATING WITNESSES OR PLACING THEM "UNDER THE RULE."—The practice in Virginia Courts of placing witnesses "Under the Rule" is of very ancient origin, though still a matter of daily occurrence.

The wisdom of the practice was, perhaps, never more dramatically demonstrated than in the first instance of its usage; the historical account of which is a bit of Legal Lore that should be found in the mental "Green Bag" of every member of the Profession—principally because it "smacks" faintly of the waters of the Pierian Spring, and has a tendency (when told in an impressive manner) to convince the Listener that the Teller has partaken rather liberally of its blessings. Incidentally, it may be noted that the case from which the practice arose, was the first instance of the direct examination of the witness.

To the originality and wisdom of Daniel, who was then a "Young Youth" or "Youngster," the profession is indebted for the practice; the circumstances leading to the application, briefly told, run in this wise:

In the City of Babylon lived Joacim, a very wealthy man, who on account of his integrity and uprightness, was held in high esteem by all his fellow-men. His home was a Castle of Delight, and its furnishings were sumptuous and luxurious; adjoining his house was a very beautiful garden, most pleasing to the eye.

To Joacim's house the Sages and Teachers resorted as a place of gathering and consultation, for his liberality and hospitality were notorious. Joacim married Susanna, a very fair woman, and beautiful to look upon; it was her custom, attended by her maids, to walk in the garden.

Two Elders, or Judges, were, at this time, appointed to govern the people and to determine their disputes, and on account of Joacim's prominence and liberality they established their Courts in his house, and all who had suits in law came to them there. At noon, when the suitors had departed, Susanna would walk in her garden, and the Judges, seeing her upon her walks, were "wounded for love of her;" though neither would declare to the other his lust.

And so it happened, when the suitors had departed, and the Judges had gone, each to his separate place of abode, that both of them secretly returned, and, by accident, encountered one another, whereupon each confessed to the other his lust. Together they then plotted to bring Susanna to their desires.

So they hid themselves in her garden, and when Susanna came to the garden to bathe herself, attended by her maids, and when she had dispatched her maids to fetch her ointments and to bar the doors of the garden, the two judges came to her and said: Behold the garden doors are shut that no man can see us, and we are in love with thee, therefore consent unto us, and lie with us, saying that if she refused them their desires, they

would bear witness that they had found a young man with her. But Susanna being a woman of piety and chastity, disregarded their threats, and called loudly for her attendants.

The Judges threw open the doors of the garden, and, when the servants entered, they raised their accusations against her.

Upon the day following, when the people had gathered, the Judges ordered that Susanna should be brought before them, and when she was before them . . . "the two Elders stood up in the midst of the people, and laid their hands upon her head and said: 'As we walked in the garden alone, this woman came with her two maids, and shut the garden doors and sent the maids away; then a young man, who was there hid, came unto her and lay with her. We that stood in the corner of the garden, seeing this wickedness, ran unto them, and the man we could not hold, for he was stronger than we, and opened the garden door and leaped out. But we have taken this woman, and we asked her who the young man was, but she would not tell us. These things do we testify."

The people who heard this believed, for the Judges themselves had testified.

Susanna, being found guilty of adultery under the Mosaic law, was condemned to die. When she was led out to the place of execution, a young man whose name was Daniel stood by, and he called in a loud voice that he was guiltless from the blood of this woman; and the people who were about him asked him the meaning of his words, and then he spoke to them, telling them that they were fools for condemning a daughter of Israel without examination, or knowledge of truth, bidding them to return again to the place of judgment. The people returned, and he further bade them to put the two Judges aside, one far from the other, and when they were separated he ordered that one be brought before him, and, when he was brought, Daniel asked: "Now, then, if thou hast seen her, tell me under what tree sawest thou them companying together?" And the Judge answered him and said: "Under a Mastic tree." And Daniel then ordered that the other Judge should be brought before him, and questioned: "Under what tree didst thou take them companying together?" And the Judge answered: "Under a Holm tree."

Then the people rose up against the Judges, for Daniel had convicted them of "false witness" by their own mouth; and following the Mosaic law the people did unto the Judges in such sort as they had maliciously intended to do unto Susanna.

The complete text may be found in the Apocrypha of the Bible, in the histery of Susanna.

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CORPORATE SEALS IN VIRGINIA.—*When seal must be used.*—Under the common law the rule was that, with a few exceptions, a corporation could only contract under its corporate seal, but this rule has long ago been exploded, and now a corporation, unless restricted by its charter, may contract in the same manner as a natural person. In *Grubbs* v. *National Life*

Ins. Co., 94 Va. 589, 3 Va. L. R. 279, Judge Cardwell says: "It is now a rule well settled throughout the United States, that a corporation may make a contract without the use of a seal, in all cases in which this may be done by an individual. 1. Morawetz, on Pr. Cors., sec. 338."

When seal must be recognized in the body of the instrument.—A great deal has been written in Virginia on the question whether or not a seal must be recognized as such in the body of the instrument, which is most commonly done by the use of the words "witness my hand and seal." From the language used in at least one note (5 Va. L. R. 333), it seems that the writer is of opinion that there is no doubt but that the seal must now be recognized in the body of the instrument in all cases. We submit that this is not the law. As to whether the seal must be recognized in the body of the instrument depends upon whether or not the writing to which the seal is affixed would be a valid and binding contract if not under seal.

If the seal be requisite to give validity to the instrument, as, for example, in the case of a deed, the cases are unanimous in holding that the seal alone, without any recognition in the body of the instrument, is sufficient. *Parks* v. *Hewlitt*, 9 Leigh 511; *Pollock* v. *Glassell*, 2 Gratt. 439; *Ashwell* v. *Ayers*, 4 Gratt. 283; *Clegg* v. *Lemessurier*, 15 Gratt. 108, 115; *Bradley Salt Co.* v. *Norfolk etc. Co.*, 95 Va. 461, 3 Va. L. R. 722, 728. Under this head, however, attention is called to the fact that the statutory forms for deeds (sec. 2437), and deeds of trust (sec. 2441) recognize the seal in the body of the instrument.

But if the seal be affixed to an instrument which is valid and binding without the seal, as, for example, a promise to pay money, it must be recognized in the body of the instrument. *Austin* v. *Whitlock*, 1 Munf. 487; *Anderson* v. *Bullock*, 4 Munf. 442; *Jenkins* v. *Hurt*, 2 Rand. 446; *Peasley* v. *Boatwright*, 2 Leigh 195; *Cromwell* v. *Tate*, 7 Leigh 301; *Turberville* v. *Bernard*, 7 Leigh 302; *Clegg* v. *Lemessurier*, 15 Gratt. 108; *Grubbs* v. *Nation Life Ins. Co.*, 94 Va. 589, 3 Va. L. R. 279; *Bradley Salt Co.* v. *Norfolk etc. Co.*, 95 Va. 461, 3 Va. L. R. 722. The reasons for requiring a recognition of the seal in this class of cases are very fully given by Judge Buchanan in *Bradley Salt Co.* v. *Norfolk etc. Co.*, 95 Va. 461, 3 Va. L. R. 722. He says: "The facility with which a seal of wax or a scroll may be fraudulently affixed to the name of the party, and the character of the instrument thereby entirely changed, affords an unanswerable argument in favor of requiring the recognition in the body of the instrument. As the addition of the seal may create a lien on the realty; as it operates an estoppel, and concludes the party from denying the consideration of questioning the facts set forth in the instrument; as it elevates the contract to the dignity of a specialty in the distribution of assets; as it excludes the protection of the Act of Limitations; as it is so easy to add a seal fraudulently, without risque of detection; and as the proof of handwriting, in the absence of subscribing witnesses, is considered sufficient proof of sealing and delivery, I think it wise to require a recognition of the seal by the instrument itself, instead of trusting the proof of so important a fact to the slippery memory of witnesses."

Will a scroll serve as a seal?—Whether a scroll may serve as a corporate seal in Virginia has not been decided. Section 2841 of the Code provides: "Any writing, to which a natural person making it shall affix a scroll by way of seal, shall be of the same force as if it were actually sealed. The impression of a corporate or an official seal on paper or parchment alone shall be as valid as if made on wax or other adhesive substance."

Commenting on this section, Prof. Lile says: "By strong inference [this statute excludes], the use of a scroll as a corporate seal. The inference is weakened, however, by the circumstance that at the time [this statute was] originally drawn, it was the accepted doctrine that wax or some other tenacious substance was a *sine qua non* of a corporate seal, and the evident purpose was to relax rather than to preserve the common law technicalities of the seal." 5 Va. L. R. 333.

In a note to this section by the revisers of the Code it is said: "It is incident to every corporation to have a common or corporate seal. It may make or use what seal it will. Angell and Ames on Corporations 151." Report of Revisers, p. 74.

Prof. M. P. Burks says: "It is worthy of observation . . . that nowhere does the statute declare that the scroll of a corporation affixed by way of seal shall have the effect of a seal. This is declared as to natural persons, but not as to corporations. . . . It is simply declared that the '*impression*' may be made on paper instead of wax, but it seems to assume that there must be an *impression*—not a mere stamp or scroll." 3 Va. L. R. 283.

On the subject of seals, generally, see: 1 Va. L. R. 518, 622; 3 Va. L. R. 282, 728; 5 Va. L. R. 331. G. C. G.